

# CITY OF LAS VEGAS

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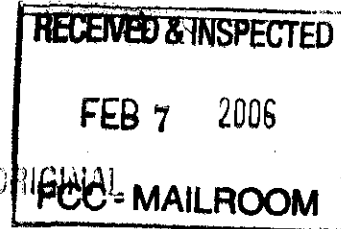


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February 6, 2006

**VIA FEDERAL EXPRESS**

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Marlene Dortch  
Office of the Secretary  
Federal Communications Commission  
9300 East Hampton Drive  
Capitol Heights, Maryland 20743

Re: Comments of City of Las Vegas, Nevada  
MB Docket No. 05-311

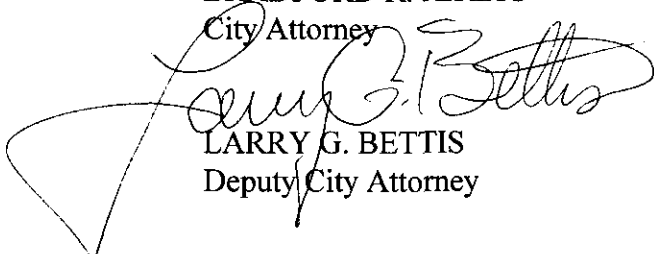
Dear Ms. Dortch:

Please find enclosed the City of Las Vegas's comments in the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992.

If you should have any questions, please do not hesitate to contact me.

Sincerely yours,

BRADFORD R. JERBIC  
City Attorney

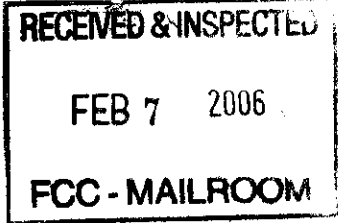
  
LARRY G. BETTIS  
Deputy City Attorney

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Enclosure

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554



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In the Matter of )  
Implementation of Section 621(a)(1) of )  
the Cable Communications Policy Act of 1984 )  
as amended by the Cable Television Consumer )  
Protection and Competition Act of 1992 )

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MB Docket No. 05-311

**COMMENTS OF CITY OF LAS VEGAS, NEVADA**

These Comments are filed by the undersigned on behalf of the City of Las Vegas ("Las Vegas") in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Las Vegas believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In Las Vegas, a cable television franchise is termed a "Cable Television Agreement." The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Las Vegas also has a cable ordinance that operates in conjunction with the franchise agreement, the terms of which were negotiated with our cable provider in conjunction with the agreement. The franchise agreement and the cable ordinance will be collectively referred to as the "franchise" below.

**Cable Franchising in Our Community**

**Community Information**

Las Vegas is a city with a population of almost 600,000. Our franchised cable provider is Cox Communications. Las Vegas has negotiated cable franchises since 1979.

**Our Current Franchise**

Our current franchise began on October 1, 1998 and expires on October 1, 2013. At this time, we are not currently negotiating a franchise renewal with the incumbent provider or a new franchise with any other provider.

Our franchise requires the cable operator to pay a franchise fee to Las Vegas in the amount of 5% of the cable operator's revenues. The revenues for franchise-fee purposes are

calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act, and are also subject to certain programming-cost deductions allowed under Nevada law.

Las Vegas requires the cable operator to provide capacity for public, educational and governmental ("PEG") access channels on the cable system, including certain analog and digital channels that are not required to be on the basic service tier but that are functionally equivalent to PEG channels. The franchise requires the capacity for 11 total PEG channels, including two government-access channels that have been activated, one additional activated government-access channel used for public safety purposes (i.e., Fire Department training and briefing), two activated educational access channels, and six other PEG channels that have not yet been activated.

Our franchise does not require that our PEG channels be monetarily supported by the cable operator, although the operator and Las Vegas have been donating \$150,000 per year in matching grants for support of the educational access channels. In addition, Las Vegas budgets approximately \$1,650,000 per year for its government access channel out of the franchise fees paid by the cable operator. These expenditures benefit both Las Vegas residents and the cable operator through better PEG programming.

Our franchise contains the following requirements regarding an emergency alert system ("EAS"): The cable operator shall maintain an EAS consistent with F.C.C. regulations, and such system shall allow a representative of Las Vegas to override the audio and to provide a video crawl on all channels of the cable system, without the assistance of the operator, for emergency broadcasts in the event of a civil emergency. These EAS requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains customer service obligations, based on F.C.C. regulations, by which we are able to help ensure that the cable operator is treating our residents fairly. The customer service obligations are enforceable through the assessment of liquidated damages pursuant to the franchise.

Our present franchise, like the original franchise, contains reasonable build schedules (including schedules for upgrading the cable system) that the cable operator had to meet to effectively serve our entire community.

Our franchise effectively requires that the cable operator provide service to all areas of our community based on line-extension policies (i.e., extending service to new areas as long as there are at least 35 potential subscribers per mile for the requested extension).

In order to ensure that our residents have access to current technologies, our franchise contains the following system (upgrade) requirements: minimum bandwidth of 750 MHz, "fiber to the neighborhood" with an average of no more than 1,200 residents per node, and an activated two-way capability throughout the entire system. Such system allows the cable operator to provide cable modem service throughout Las Vegas, and the operator recently began offering telecommunications services to Las Vegas residents also.

Our franchise contains the following insurance and bonding requirements: \$2,000,000 in general liability and motor vehicle coverage, and a \$200,000 general performance bond.

Our franchise grants the cable operator access to the public rights-of-way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office before it may work in the public rights-of-way.

Our franchise provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: detailed auditing provisions concerning the calculation of franchise fees owed by the operator and liquidated-damages provisions for breaches of customer service standards in the franchise.

### **The Franchising Process**

The cable system serving Las Vegas also serves four adjoining communities, which worked together with Las Vegas in 1998 to simultaneously issue cable franchises for the cable operator. These communities are: Clark County, the City of Henderson, the City of North Las Vegas and Boulder City. The joint negotiating process allowed the provider to quickly obtain essentially uniform franchises in all five communities, so as to be able to serve a large region, while allowing each community to tailor its franchise to its unique needs in narrow areas.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act, it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties, the provisions in the franchise agreement function as contractual obligations upon both parties.

As a part of negotiating a franchise with Las Vegas, the cable operator is, of course, afforded all due process and statutory rights granted under the Federal Cable Act to protect the operator's interests. The City is not allowed to unreasonably deny a new cable franchise application, and it cannot deny renewal of an existing franchise except pursuant to the limited grounds set forth in U.S.C. Title 47.

### **Competitive Cable Systems**

Las Vegas has been approached by potential competitive cable providers in the past, but such providers chose not to proceed with obtaining cable franchises. Las Vegas has never denied or attempted to deny a cable franchise to competitive providers.

## Conclusions

The local cable franchising process functions well in Las Vegas. We are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights-of-way in a fair and evenhanded manner, that other users of the rights-of-way are not unduly inconvenienced, and that uses of the rights-of-way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that Las Vegas' specific needs are met and that its residents are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

Las Vegas therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

BRADFORD R. JERBIC, City Attorney



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